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Book Reviews

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Book Reviews

Historical and Statutory Background of The Law of Wills, Descent and Distribution, Probate and Administration. By Alison Reppy & Leslie J. Tompkins. Chicago: Callaghan & Company, 1928.

This book is exactly what it purports to be—a treatise on the Law of Wills and Administration of Estates viewed in the light of its historical evolution, and with continual reference to the statutes, both of England and the United States which lie at the basis of the subject. It is a highly satisfactory piece of legal writing, and will prove helpful not merely to students and investigators of the law, but to practising attorneys who are in truth desirous of learning the reason for the fundamental doctrines of this important branch of jurisprudence. The preliminary treatment of the history of wills and testaments is based upon the historical distinction between these two things, and the reason for the distinction is made manifest. It is in the second chapter, however, which deals with descent and distribution, that the statutory basis of the law becomes of special significance. It is difficult to think of any treatise in which this division of the subject is more clearly and effectively considered.

Yet, it is in the third chapter, which deals with the law of probate and administration, that we find the special value of this book. Outside of a few chapters in Werner's *Law of Administration of Estates*, it is difficult to find in one place a treatment of the law and parts of the ecclesiastical courts with regard to testaments. The development of ecclesiastical courts from the Anglo-Saxon period with special reference to the diocesan and provincial courts of Canterbury and York are treated at considerable length. The section dealing with form of probate of wills and ecclesiastical courts with the distinction of probate in the common form and probate in the solemn form, as

well as procedure in the actual probating of wills, are described at length.

The development of chancery jurisdiction over administration of estates is made clear and distinct, and special attention is called to four great and novel doctrines developed by the chancellors, namely, marshalling, conversion, satisfaction or ademption, and election of remedies. We can unreservedly recommend this book.

Stare Decisis, Res Judicata and Other Selected Essays. By Robert von Moschzisker. Philadelphia: Cyrus M. Dixon, 1929.

This volume consists of essays and public addresses delivered during the course of the chief justiceship of the writer. While the subject matter is primarily of a legal nature, an attempt has been made to keep the language free from technical expressions, so that others, as well as lawyers, may be interested. There are few textbooks which deal with the subjects contained herein. The thesis of the writer in dealing with the important subject of *Stare Decisis*, is that it is of importance because it enables lawyers to advise their clients with a reasonable degree of certainty and safety what the law in fact is, and that so far as they can on authoritative rules of conduct, their rights will be protected in the courts. Attention is called to the fact that unless the doctrine is administered wisely, it tends to perpetuate that which is merely traditional, and prevents the law from keeping pace with changing conditions.

The essay on *Res Judicata* is significant, and attention is called to its late development in the law.

The treatment of the subject of *Presumptions as to Foreign Law* deals effectively with a somewhat involved question. The other chapters on *Common Law and Federal Jurisprudence*, *Equity Jurisdiction in the Federal Courts*, and the

Amendment of the Federal Constitution, are interesting and valuable.

Law and Theory of Railway Demurrage Charges. By Harleigh H. Hartman. New York: Traffic Publishing Co., 1925.

This book embodies material developed by the writer in connection with his work as attorney and examiner for the Interstate Commerce Commission. It does not purport to be merely an annotation of the uniform demurrage rules or a digest of the case law, but it seeks to study the salient features of the theory of law and practice in demurrage matters. The leading cases of the court have been abstracted in the text, and the notes accompanying them are an essential part of the work.

Railroad Regulation Since 1920. By D. Philip Locklin. New York: McGraw-Hill Book Co., Inc., 1928.

It is the purpose of this book to describe briefly the important development in the field of railway regulation that has occurred in the United States since 1920. It deals, therefore, in a large measure with the Transportation Act of 1920, and with the interpretation and administration of that act. Much of the material, according to the writer, was brought together for the benefit of students in the course given by him at the University of Illinois, where it has been used to supplement existing textbooks.

The book is primarily descriptive and does not offer any solution of the railroad problem. The writer does not undertake to pass judgment on the wisdom or folly of the Transportation Act or of the policies adopted by the Interstate Commerce Commission, and any discussion of the problem of valuation of the property of common carriers has wisely been avoided.

Lectures On Legal Topics. Volume VII, 1925-1926. New York: The Macmillan Company, 1929.

This volume consists of addresses which were delivered at the instance of

the Association of the Bar of the City of New York, to audiences drawn largely from the practicing lawyers of that city. The especially significant articles are: one by J. G. Korner, Chairman of the United States Board of Tax Appeals, on the subject of the Bar's Responsibility in the Matter of Federal Taxation; another by Judge Knox of the United States District Court on Self-Incrimination; another on Frozen Funds by Ralph Hayes, Director of The New York Community Trust; and lastly, a valuable address by Surrogate George A. Slater on Tests to Be Applied by Lawyers as "Draftsmen of Testamentary Documents."

Corporate Advantages Without Incorporation. By Edward H. Warren. New York: Baker, Voorhis & Co., 1929.

This treatise is written by Professor Warren of the Faculty of the Harvard Law School, and is based upon his work with students who studied with him the law of business corporations. It deals with the rules applicable to unincorporated bodies of men who have joined together to further their financial interests; it comments upon the constitutional provisions, statutes, decisions relating to ordinary partnership, limited partnership, partnership associations, business trusts, unincorporated labor unions, joint-stock companies, and defacto corporations. The underlying question in the treatise is this: "can corporate advantages be obtained without incorporation?"

After considering partnerships somewhat in detail for the purpose of determining whether there is such a thing as a legal entity, that is, that there is a legal person separate and distinct from the partners, or the aggregate theory which holds to the contrary, and having considered the statutes applicable to limited partnerships and joint-stock companies, the writer comes to a consideration of his main question which he answers to this effect: that it is not proper for the courts to treat a body of men as a legal unit without legislative authority for the act, and for this view he gives the

following reasons: (1) if a legislature should authorize the courts so to act, it would probably be an unconstitutional delegation of a legislative function; (2) that even if the legislature has the constitutional power so to act, it is not proper for the courts themselves to give a concurrent jurisdiction; (3) even if it is constitutional for the legislature to act, and if the court would be justified in assuming concurrent jurisdiction, it would not be wise for a court so to act.

Cases on the Law of Carriers. By Ralph Stanley Bauer and Edgar Watkins. New York: Prentice-Hall, 1928.

In this book we have a collection of cases dealing with the relationship of carrier and shipper, and carrier and passenger. Only such cases are presented as give an idea of the original common law with the modifications made by statutes. The federal statutes applicable are placed in the text wherever needed to make the subject matter clear. In addition, the Federal Bills of Lading Act and the Interstate Commerce Act as amended are included in an appendix for general reference.

Selected Cases on the Law of Contracts. By Ernest W. Huffcut and Edwin H. Woodruff. Fourth Edition. Albany, New York: Banks & Company, 1925.

This is the fourth edition of a well known collection of cases on this important subject. Thirty-three cases have been added since the publication of the third edition in 1913, and additional annotations with some reference to the periodical literature appear in the footnotes.

Selected Cases on Industrial Law. By E. F. Albertsworth. Chicago: Northwestern University Press, 1928.

In view of the fact that the present era is essentially one of industrialism, it is highly fitting that a collection of the cases which have arisen in the courts, dealing with the economic and legal activities of modern industry, should be

brought together in usable form. The following legal phenomena are treated by the writer as embraced within the convenient term, Industrial Law: (1) the application of legal principles in making recompense for injuries sustained by the employe, growing out of the industry in which he is engaged, (2) the problems relating to labor combinations that have developed out of industrialism, (3) growth of large-scale business, possessing large capitalization, having no legal personality, and therefore no personal responsibility.

The subject, therefore, may be divided into three sections: (1) relations between employer and employe; (2) relations between producer and producer; and (3) Relations between industry and the state.

Cases on the Law of Torts. By Francis M. Burdick. Fourth Edition by Charles K. Burdick. Albany, New York: Banks & Company, 1929.

A considerable number of new cases presenting new problems have been added to this last edition of a well known collection of cases on the subject of torts. The footnotes have been amplified, and special attempt has been made to give references to articles and discussions found in legal periodicals.

Cases on the Law of Property. Volume V —Wills, Descent and Administration. By George P. Costigan, Jr. Second Edition. St. Paul: West Publishing Company, 1929.

After an interval of nineteen years, the second edition of this case book has been brought out. During that time much new material has accumulated, which requires a reconsideration of previously accepted doctrines.

This is by far the best collection of cases on this important subject, and the second edition has added to the credit earned by the writer in bringing together this valuable collection of authorities.

While no new sub-divisions have been added to the cases the footnotes have

been enlarged, and in the appendix are practical suggestions with regard to the planning and drafting of wills.

If the plan adopted in Powell's Cases on Future Interests had been followed here, and in the footnotes questions for discussions arising out of the case had been presented for solution by the students, we would have a perfect case book.

Impressions of an Average Jurymen. By Robert Stewart Sutcliffe. New York: D. Appleton & Co., 1925.

Every attorney feels the necessity from time to time of indulging himself in the lighter literature of his profession. Here he will find a book which will give him much pleasure and amusement. The writer informs us that he has served as a juror in New York civil and criminal courts for eighteen years, and has heard a wide variety of cases tried. It occurred to him that an average jurymen, showing his weak points as well as his strong ones, would be valuable material for lawyers, and with this end in view he made the acquaintance of as many different lawyers as possible. His impressions are contained in this book.

Questioned Documents. Second Edition. By Albert S. Osborn. Albany, New York: Boyd Printing Co., 1929.

The science of handwriting study did not come into existence until a comparatively short time ago. Of late years there has been a vast progress, and a firm place has now been made for the expert witness who is in fact scientific, not merely empirical. It is well to remember that in our own state, comparison of handwriting is not allowed until after the passage of the statute of 1915. There are so many cases involving disputed documents that the legal profession has long been in need of a thoroughly scientific treatment of the law applicable to such cases. Such a book we have in this treatise by Mr. Osborn.

The chapter on the Physical Preparation of Documents is highly important, and points out the careless and negligent manner in

which legal papers of importance are too often prepared, furnish evidence that the attorney who drew them is not qualified for the duties he attempted to perform, and it would be highly desirable if the law with regard to the personal responsibility of attorneys for careless work might be judicially enforced.

The binding and joining together of the separate parts of documents is in light of decisions an important matter that should receive particular attention. The suggestion that paper for wills might be furnished in rolls, so that a will might be written on one continuous sheet, has something to recommend it. The actual execution of wills and other documents is likewise important and receives careful consideration.

The chapter on the Process of Comparison of Handwritings, as well as the one relating to Proof That a Disputed Writing Was Not Written by an Alleged Writer, contains valuable suggestions of much practical significance.

The bibliography is quite complete and furnishes additional means by which the student who desires to do so can get to the bottom of this abstruse subject.

Anthropology and Modern Life. By Franz Boas. New York: W. W. Norton & Co., 1928.

Anthropology is often considered a collection of curious facts, telling about the peculiar appearance of exotic people and describing their customs and beliefs. The contention is that this opinion is entirely wrong and that a clear understanding of the principles of anthropology serves to illuminate the social processes of our own times.

The author deals first with the problem of race, the overlapping of racial types, and the important question of heredity. In the second place he deals with the question of the stability of culture and the acceleration of cultural development, and more in detail with the relations which exist between modern civilization and primitive culture.